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BEFORE THE
ILLINOIS COMMERCE COMMISSION

IN THE MATTER OF:)
)
NEW LANDING UTILITY, INC.)
)
)
PROPOSED GENERAL INCREASE IN)
WATER AND SEWER RATES.) No. 04-0610
)
)
)
)
)

Chicago, Illinois
March 14th, 2005

Met, pursuant to notice, at 9:30 a.m.

BEFORE:

IAN D. BRODSKY, Administrative Law Judge

APPEARANCES:

MS. AMY MURAN FELTON
110 South Euclid Avenue
Oak Park, Illinois 60302
(708) 790-7643

-and-

MR. GENE L. ARMSTRONG
1111 South Boulevard
Oak Park, Illinois 60302
(708)386-9400 x4
for Applicant.

1 MS. CARLA SCARSELLA
160 North LaSalle Street
2 Suite C-800
Chicago, Illinois 60601
3 (312)793-3305
-and-
4 MS. JANIS E. VON QUALEN
527 East Capitol Avenue
5 Springfield, Illinois
(217)785-3402 (telephonically)
6 for Staff;

7 MS. SUSAN L. SATTER
100 West Randolph Street
8 11th Floor
Chicago, Illinois 60601
9 (312)814-8496
-and-
10 MR. RISHI GARG
100 West Randolph Street
11 Suite 15-200
Chicago, Illinois 60601
12 (312)814-4220
for the People of the State of Illinois;
13 LOWE & STEINMETZ, LTD, by
MR. RALPH LOWE
14 407 West Galena Boulevard
Aurora, Illinois 60507
15 (630)897-0900
for LNPOA.
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21 SULLIVAN REPORTING COMPANY, by
Devan J. Moore, CSR
License No. 084-004589
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I N D E X

<u>Witnesses:</u>	<u>Direct</u>	<u>Cross</u>	<u>Re-</u> <u>direct</u>	<u>Re-</u> <u>cross</u>	<u>By</u> <u>Examiner</u>
None.					

E X H I B I T S

<u>Number</u>	<u>For Identification</u>	<u>In Evidence</u>
None.		

1 JUDGE BRODSKY: Pursuant to the authority of
2 the Illinois Commerce Commission, I now call Docket
3 04-0610. This is New Landing Utility, Inc.; it's
4 their application for a general rate increase.

5 Would you enter the appearances, for
6 the record, please, starting with the Company.

7 MS. FELTON: Good morning.

8 Amy, Muran, M-u-r-a-n, Felton,
9 F-e-l-t-o-n; 110 South Euclid, Oak Park, Illinois
10 60302.

11 MS. SCARSELLA: Appearing on behalf of Staff
12 witnesses of the Illinois Commerce Commission, Carla
13 Scarsella and Jan Von Qualen, 160 North LaSalle
14 Street, Suite C-800, Chicago, Illinois 60601.

15 MR. LOWE: Ralph Lowe appearing on behalf of
16 the Loss Nation Property Owners Association, 407
17 West Galena Boulevard, Aurora, Illinois 60506.

18 MS. SATTER: Susan L. Satter and Rishi Garg
19 appearing on behalf of the People of the State of
20 Illinois, 100 West Randolph Street, Chicago, Illinois
21 60601.

22 JUDGE BRODSKY: All right. Thank you.

1 Did we get an appearance from

2 Ms. Von Qualen?

3 MS. SCARSELLA: I made an appearance for Jan.

4 I'm sorry.

5 JUDGE BRODSKY: All right. First order of
6 business today is the motion to continue the trial
7 which is, otherwise, set for tomorrow.

8 So, I guess what I'll do at this point
9 is -- Staff, do you want to start with any comments?

10 MS. SCARSELLA: Thank you, your Honor.

11 I would just like to say Staff has
12 received information late last week. It has made no
13 allegation as to anyone's responsibility as to not
14 receiving the information sooner; it's just the fact
15 that we received it late last week.

16 And, as a result, Staff has still been
17 trying to look through the information it received
18 and come to a conclusion as to whether any of its
19 recommendations that it has filed in its testimony
20 would change its result of that information.

21 It has been unable to prepare for
22 cross because it has been looking at this information

1 that it has received.

2 JUDGE BRODSKY: What was the source of the
3 information?

4 MS. SCARSELLA: We received, late last week,
5 the motion for receivership that was filed in the
6 Ogle County case; and attached to that motion were
7 various documents that Staff had not seen.

8 JUDGE BRODSKY: Okay. Any comments from HE
9 of --

10 You're representing the HE who made
11 the motion for the receivership in Ogle County?

12 MS. SATTER: Right.

13 JUDGE BRODSKY: Okay. So, do you have any
14 comments to make?

15 MS. SATTER: Yes.

16 The office of the Attorney General has
17 been investigating this Utility in connection with
18 environmental violations, and also in connection with
19 getting the Court order complied with and looking at
20 the general condition of the Utility.

21 We felt that it was important to get
22 the factual information that -- our environmental

1 bureau had uncovered these subpoenas and other
2 processes to the attention of the Staff.

3 And so we did forward that information
4 to them; and now they're looking at it and trying to
5 incorporate it. And we welcome that.

6 JUDGE BRODSKY: Okay. Mr. Lowe, anything?

7 MR. LOWE: Well, if Staff feels that they need
8 additional time, we don't object. And I feel that
9 probably it's to the advantage of consumers anyway.

10 The Staff have all of the facts they
11 could possibly have before they testify and submit
12 themselves for cross-examination.

13 At this point, we have no way of
14 knowing whether or not any of their testimony will
15 change as a result of this; but I don't think that
16 another week is going to make any difference.

17 And, so, we don't object to the
18 continuance.

19 JUDGE BRODSKY: That's fine. Mrs. Felton?

20 MS. FELTON: Yes, your Honor. Thank you.

21 The Utility objects to the motion to
22 continue the hearing for several reasons.

1 The first being that this motion for
2 receivership was filed on January 25th of this year;
3 but, more importantly, the information that the Staff
4 is concerned about, the exhibits that were attached
5 to that motion, that information was extrapolated and
6 revealed on the Ogle County hearing in January of
7 '04.

8 So, this information has been
9 available to the Staff and certainly to the HE as
10 well as to Staff for over a year. So the fact that
11 they're filing this motion at the 11th hour, just
12 prior to the hearing, seems to be a bit belated.

13 Secondly, the information seems to be
14 that they're interested in further exploring. It
15 seems to relate to a question over the Utility's
16 arrangements with various other parties. Again, that
17 seems to fall more into the affiliated interest kind
18 of component, which is not before the Commission on
19 this particular docket.

20 So if they, for instance, want to
21 explore that, that would be more appropriately
22 explored in the other docket.

1 If for some reason your Honor feels
2 that it's important to settle this at a different
3 date, hearing date, the first week in April that's
4 proposed by the Staff does not work for the Utility.
5 And, secondly, we don't -- if for some reason it was
6 warranted to schedule this hearing at a later date,
7 we would not want to agree on any continuance of the
8 July expiration date of this particular docket.

9 JUDGE BRODSKY: Okay. Any reply?

10 MS. SCARSELLA: Well, your Honor, the fact that
11 these records were available since last year, Staff
12 was only aware of the documents that have been
13 provided to it in this docket, in this proceeding.

14 And further, the very fact that these
15 costs may be associated to parties for which no
16 affiliated interest exist -- agreements exist, goes
17 to the very heart of whether the Staff needs to
18 evaluate if those costs somehow ended up into its
19 schedules.

20 And if those costs from which no
21 affiliated interest agreements happened for some
22 reason to have gotten into Staff's schedules then,

1 obviously, Staff needs to revise those schedules, and
2 their position may change.

3 JUDGE BRODSKY: Okay. Now, my understanding is
4 that the Circuit Court of Ogle County's hearing the
5 motion for the receivership this week at some point;
6 is that correct?

7 MS. SATTER: Yes. Friday is an evidentiary
8 hearing, a scheduled evidentiary hearing. We were
9 also there the last day of February and there was --
10 the evidentiary hearing ended up being continued, but
11 some of the information -- and we have shared this
12 with Staff -- was stipulated to at that time.

13 JUDGE BRODSKY: Okay.

14 MS. SATTER: But the hearing is Friday.

15 JUDGE BRODSKY: Does that mean that whatever
16 decision that the Court makes will be made on Friday
17 or Monday, or do we know? Is it possible to know, at
18 this point?

19 MS. SATTER: Well, at this point, the hearing
20 is scheduled for Friday, possibly to continue to
21 Monday.

22 Whether the Judge will make a decision

1 or not is really up to him. He has taken his time in
2 the past, but we don't know. But I would like to
3 suggest that should he enter an order appointing a
4 receiver, the Commission's role in setting rates
5 would still be preserved, at least it's my
6 understanding it will still be preserved.

7 The only difference would be that the
8 management would be different so that whatever order
9 the Commission enters would be carried out by a
10 different management, but the Commission's role in
11 setting the rate would be preserved.

12 JUDGE BRODSKY: So, in other words, regardless
13 to the decision of the receivership, your position is
14 that the rate case is not really impacted by that
15 decision?

16 MS. SATTER: It might be impacted to the extent
17 that the receiver would look at the information and
18 they -- and conclude that it needs to be changed.
19 Because, as we've said in our testimony and as Staff
20 is reviewing, there is an unusually large amount of
21 money that's being paid to affiliated interests
22 without the benefit of Commission approval.

1 And it's also unclear where all the
2 money from the Utility is going or has gone for the
3 past 20 years. And the receiver would be in the
4 position to look at all of that fresh.

5 And that might be something that the
6 Commission would want to take into consideration.

7 JUDGE BRODSKY: If we assume the time frame for
8 the rate case expired July 30th, what mechanism,
9 procedurally, would be available for a continued
10 investigation if that's what is, in fact -- warranted
11 and if that's, in fact, what happens based on the
12 decision of the up and coming Court?

13 MS. SATTER: I'm guessing, but I would think
14 that the receiver would have the options available to
15 them pursuing this case, withdrawing this case, and
16 refiling with new evidence, if this case goes to the
17 decision, filing an application for rehearing with
18 new evidence, which might make the most sense from a
19 receiver -- from a customer's point-of-view because
20 if the information is available, they could do it in
21 the context of this case at that point, if it's
22 appropriate, if it's necessary.

1 JUDGE BRODSKY: Which we won't know at this
2 point.

3 MS. SATTER: We won't know.

4 JUDGE BRODSKY: Okay. Right.

5 MS. SATTER: But, however, we do feel that, in
6 the absence of a receiver, there are significant
7 problems as to the expenditure of funds that are
8 received by the Utility.

9 JUDGE BRODSKY: Okay. Anything from the
10 Company, at this point?

11 MS. FELTON: Nothing right now, no.

12 It's just that the Utility doesn't see
13 the point of sending this hearing any further. The
14 information has been available to the Staff for a
15 very long time. And if I might add, most of the
16 information was also revealed in our data responses.
17 So, the information has been available. They could
18 have explored it over the last several months and
19 they have chosen not to.

20 JUDGE BRODSKY: Okay. Okay. Anything further
21 from anybody else, at this time?

22 MR. LOWE: I might suggest, your Honor, that if

1 a receiver is appointed, the receiver may choose not
2 to proceed. It may choose to dismiss this case or
3 may choose to do something else.

4 And I'm not sure with any degree of
5 certainty that if a receiver is appointed, that the
6 Commission would still have any jurisdiction.

7 JUDGE BRODSKY: Why is that?

8 MR. LOWE: Pardon?

9 JUDGE BRODSKY: Why would that be?

10 MR. LOWE: Well, because the receiver is an
11 officer of the Circuit Court, and the whole problem
12 is it would leave that in the hands of the Circuit
13 Court. And I can't say that the Commission would
14 lose jurisdiction; but, quite conceivably, it could.

15 But that, again, would be up to the
16 Circuit judge to say whether or not they've lost
17 jurisdiction.

18 JUDGE BRODSKY: Well, I presume that if this
19 would, in fact, happen, that -- some sort of collabo,
20 that they would be alerting us to that fact.

21 Until and unless it does, I don't
22 think we can assume that that's going to be the case,

1 although I suppose it may be a possibility.

2 MR. LOWE: I think you're right.

3 MS. FELTON: Your Honor, if I might respond to
4 Mr. Lowe's comment?

5 JUDGE BRODSKY: Of course, go ahead.

6 MS. FELTON: Thank you.

7 The Utility would be concerned if such
8 a receiver were appointed, that that would even be
9 the Court authority by the Court in Ogle County to
10 actually appoint a receiver. And, therefore, it's
11 likely to be a subject of interlocutory appeal.

12 So, I don't think this issue is
13 necessarily going to be resolved, if immediately, in
14 any regard with respect to the receivership.

15 So if that is the subject, we don't
16 believe that that's --

17 JUDGE BRODSKY: Okay. I'll accept that as a
18 comment for purposes of the status of the issue.

19 Obviously, I can't speak to what the
20 Court may or may not do. Absolutely.

21 Now, is there any argument, at this
22 point as to the standing of the Company if a receiver

1 is, in fact, appointed?

2 Now, standing was kind of an issue
3 before and that's why I'm asking about it now.

4 Let me just see what the parties'
5 positions are.

6 MS. FELTON: On the receivership?

7 JUDGE BRODSKY: If the receiver is appointed,
8 is there any argument for or against the possible
9 notion that the Utility would, as a result of the
10 appointment, not have a standing to pursue their
11 case?

12 MS. FELTON: I'm not really representing the
13 Utility on the enforcement matter.

14 JUDGE BRODSKY: I'm sorry. Can you repeat
15 that.

16 MS. FELTON: I'm not representing the Utility
17 on the enforcement matter. So as far as the impact
18 of a receivership on this particular proceeding, the
19 rate proceeding --

20 JUDGE BRODSKY: Right.

21 MS. FELTON: -- I mean, I think, the Utility
22 would oppose the appointment of a receivership and,

1 hopefully, either way would move forward with the
2 rate case.

3 Maybe Mr. Armstrong can speak to that
4 better as far as the impact on the receivership.

5 JUDGE BRODSKY: So, your position is that even
6 if a receiver's appointed that there is no effect on
7 the standing of New Landing Utility pursuing the rate
8 case?

9 MR. ARMSTRONG: Absolutely.

10 MS. FELTON: Yeah. No.

11 JUDGE BRODSKY: Do the others agree and
12 disagree with that?

13 MS. SCARSELLA: Well, Staff would still object
14 to the New Landing's standing in this case to bring a
15 rate case. But as to whether or not the receiver
16 affects that position, I don't believe so because the
17 receiver would just really be taking over in the
18 management role, looking --

19 JUDGE BRODSKY: Okay. Let me pause before you
20 go further.

21 Staff objects to -- or continues to
22 object to New Landing's standing, which is what --

1 MS. SCARSELLA: Right.

2 JUDGE BRODSKY: So, is that the previous
3 objection that we talked about in terms of the
4 unapproved stock transfer?

5 MS. SCARSELLA: Yes. Staff's position would
6 remain unchanged.

7 JUDGE BRODSKY: Okay. And, then, Ms. Satter
8 you were starting to say something.

9 MS. SATTER: Frankly, I think that it's not
10 clear who the -- whether the receiver would replace
11 Mr. Armstrong to the extent that his standing as the
12 owner would be affected or not. I think it's very
13 unclear of why the difficulties -- well, let's put it
14 this way:

15 In light of the motion to dismiss that
16 Staff filed and the factual underpinnings of that,
17 it's hard to say whether the permanent receiver would
18 be an agent for Dane Company or New Landing Utility
19 as a separate entity.

20 And, I think, that that's a question
21 that's going to require a little more thought.

22 JUDGE BRODSKY: Is the appointment of the

1 receiver set against Dane or is it set against New
2 Landing or both?

3 MS. SATTER: Well, Dane Company's the owner of
4 the New Landing Utility -- Mr. Armstrong is the owner
5 of Dane company. He's the owner -- he's the operator
6 of New Landing Utility. Everything is kind of close.

7 So, the Environmental Enforcement
8 Bureau is looking for the appointment of a receiver
9 for the Utility so that the Utility will operate
10 appropriately and make the appropriate investments.

11 Dane Company -- the transfer to Dane
12 Company was a level up. So I'm just saying I haven't
13 thought that through, yet. So I'm not sure.

14 MS. FELTON: If I might add, Dane Company is
15 not a party to the enforcement case. I don't know if
16 that clarifies anything. In fact, Dane Company is
17 not a part of the enforcement matter.

18 JUDGE BRODSKY: Are you speaking to the Ogle
19 County case?

20 MS. FELTON: Yes.

21 JUDGE BRODSKY: Okay. That was against New
22 Landing Utility and Mr. Armstrong, correct?

1 MS. FELTON: Yes.

2 JUDGE BRODSKY: And no one else?

3 MS. FELTON: Nobody else.

4 JUDGE BRODSKY: Okay.

5 MS. SATTER: Which reinforces my comments.

6 I don't know what the effect would be.

7 I don't know what level we're at.

8 MR. ARMSTRONG: I know what the effect would be

9 on Dane Company, they're not a part of the case.

10 JUDGE BRODSKY: Another question for all

11 parties.

12 If a receiver is appointed, the effect

13 of the receivership, as it was my understanding, that

14 it would remove management from Mr. Armstrong.

15 Now, so far the Utility has offered

16 the testimony of Mr. Armstrong. If a receiver is

17 appointed, does that have any effect on the

18 testimony?

19 MR. FELTON: I would think only Mr. Armstrong

20 can testify with respect to this rate case.

21 JUDGE BRODSKY: Okay.

22 MS. FELTON: He's the only appropriate witness.

1 JUDGE BRODSKY: Is there any disagreement?

2 MS. SATTER: Well, I think that that goes to
3 the question if a receiver's appointed and the
4 receiver believes that different evidence needs to be
5 presented. Then you would expect that they would not
6 want to proceed with Mr. Armstrong.

7 And really, at that point, I think we
8 have to give the receiver some time to review the
9 situation because he might say, Yes, Mr. Armstrong,
10 everything you said is correct. I'm going to adopt
11 it; or he might say, I've reviewed it, I'm going to
12 step in.

13 It's hard to say.

14 JUDGE BRODSKY: Okay. So, then if a receiver's
15 appointed, then the receiver has to evaluate and then
16 make whatever decision. Is what your saying?

17 Okay. Obviously, it's -- at this
18 time, nobody's sure of what --

19 MR. FELTON: I would say it's pure speculation,
20 if I might add. We don't know what authority the
21 Court would give receiver. I mean, we don't know
22 what will be granted.

1 JUDGE BRODSKY: Right. I mean, obviously
2 nothing has happened yet as to the receivership. And
3 that's correct, we don't know how the Court's going
4 to rule.

5 I'm trying to get a sense of different
6 possibilities, at this point, as to the instant
7 determination. I mean, keeping with the fact that
8 there has been no ruling with the receivership. I
9 don't think there is any ruling that would have been
10 derived from it that would be appropriate today.
11 But, nonetheless, since we're here together I thought
12 it would be a good opportunity to explore the
13 possibilities, especially since we've got a trial
14 coming fairly soon one way or the other.

15 All right. Any other topics related
16 to the receivership issue that need to be discussed
17 at this time? No?

18 Okay. So I guess that brings us back
19 to a motion to continue at this point.

20 Is there anybody that wants to make
21 any final comments as to that?

22 MS. SATTER: In light of previous comments

1 given the uncertainty that's associated with the
2 hearings that will take place on Friday and Monday,
3 that might be an additional reason to give Staff the
4 time it needs so that when we do come back, at least
5 we'll be farther along.

6 We can avoid whatever contradictions
7 might happen on Friday and Monday by just postponing
8 the hearing a little bit.

9 JUDGE BRODSKY: All right. I think at this
10 point let's go off the record.

11 (Whereupon, a discussion was had
12 off the record.)

13 JUDGE BRODSKY: All right. After discussion of
14 the schedule, it's been determined that there's going
15 to be discussions as to the possibility of
16 stipulating certain facts; and those discussed, the
17 format may be discussions of the parties filed by
18 written stipulation or, alternatively, a sincere
19 request to submit facts.

20 Regarding as to what format the
21 parties choose to use, it was decided that
22 stipulations would be entered into the record on

1 March 30th with a written filing to the Clerk's
2 office.

3 Also, I guess on that day the
4 witnesses from the Property Owners Association, for
5 the sake of efficiency, we're going to be moving the
6 hearing in the affiliated interest case, which is
7 Docket 04-2666 -- and that matter has not been
8 consolidated with this one obviously -- from
9 Wednesday, April 6th to Monday April 4th at 9:30.

10 And then immediately following that
11 status hearing, we're going to begin the trial in
12 this matter, which is scheduled to last from April
13 4th, potentially, through April 6th at this time.

14 We have discussed an order of
15 witnesses, starting with the Company, obviously. And
16 I was asking that on March 30th that the parties also
17 file an estimate of times for cross-examination.
18 And, at this point, it looks like we'll be starting
19 with Staff on the morning of April 5th for planning
20 purposes, so let's try and take that into account.

21 Any comments as to the schedule? Any
22 other comments?

1 MS. SATTER: I was just wondering whether the
2 Company was planning to file a pretrial motion?

3 MR. ARMSTRONG: We thought that the pretrial
4 memorandum would be prepared by Staff.

5 MS. SATTER: So, that does mean that you --

6 MR. ARMSTRONG: No, we don't intend to file.

7 JUDGE BRODSKY: So are you adopting --

8 MR. ARMSTRONG: I got it at 4:36 on Friday and
9 I looked at it and it seemed to be appropriate. And
10 I'll make a more careful analysis before I sign off.

11 JUDGE BRODSKY: All right. Well, the deadline
12 for doing a pretrial memorandum was Friday afternoon.
13 And the Company had just as much time to do one,
14 so...

15 MR. ARMSTRONG: We have not done one at this
16 point.

17 JUDGE BRODSKY: Okay. So, it sounds like --

18 MR. ARMSTRONG: If for some reason -- we have
19 not done one at this point.

20 JUDGE BRODSKY: Okay. It sounds like more or
21 less you're going with Staff's, at least for purposes
22 of outlining the issues.

1 All right. Any other matters for
2 today?

3 All right. You know what? Actually,
4 one other thing we should discuss is if there's going
5 to be changes to the testimony, when are we going to
6 expect those for pretrial testimony as a result of
7 this reanalysis?

8 MS. VON QUALEN: Would March 30th be okay?

9 MS. FELTON: March 30th would be the latest
10 date, but that would be acceptable to Company. It
11 will give us a couple days to get it.

12 JUDGE BRODSKY: March 30th it is.

13 Is there anybody other than Staff that
14 is going to do revised testimony at this time?

15 Well, I guess that's really sort of a
16 question for the Utility.

17 MR. ARMSTRONG: I guess it depends on what the
18 Staff says.

19 MS. FELTON: Yeah.

20 MS. SATTER: You know, on Friday we might have
21 a better idea of where we stand. In other words,
22 after the hearing in Ogle County.

1 If there's some factual differences
2 that we want to bring to your attention, we'll have
3 to think about it at that point.

4 So, I can't say yes or no right now.
5 I'm sorry.

6 JUDGE BRODSKY: Okay. Well, in any case, I
7 assume at this point that, for purposes of the rate
8 analysis that your witnesses did, that they had
9 access to the information anyway.

10 MS. SATTER: Right.

11 JUDGE BRODSKY: So, there really shouldn't be
12 any changes unless there's some development I don't
13 know about that I would need to be made aware of; is
14 that correct?

15 MS. SATTER: That's what I am thinking; but,
16 you know, I have to admit that we weren't planning on
17 filing any revised.

18 JUDGE BRODSKY: Okay.

19 MS. SATTER: Before the hearing, if something
20 changes, I suppose I don't want to be precluded.

21 JUDGE BRODSKY: Well, I suppose if there's -- I
22 mean, any vast number of developments, that would be

1 something to make a filing about.

2 MS. SATTER: Well, what I am thinking is, it
3 might be some information that we were planning to
4 put in the record on cross-examination -- to raise on
5 cross-examination.

6 After we talk to the Company maybe we
7 can stipulate, maybe we can do it in the form of some
8 testimony. I don't know. It seems like we're being
9 kind of flexible right now.

10 And that's really how I'm viewing it.

11 JUDGE BRODSKY: Okay. Anything further for
12 today?

13 MS. FELTON: Sorry to say that the Company has,
14 you know, agreed to let the Staff amend their
15 testimony; but outside of the HE, we don't
16 necessarily see the point.

17 I guess, it's not that there's a
18 stipulation that we can agree to that. You know,
19 maybe it's under the IT, but I'm not sure why they
20 would be amending a copy of a proof to amend their
21 testimony, since they've had access to all of this
22 information for last year.

1 JUDGE BRODSKY: Well, correct me if I am wrong,
2 but what I was hearing is that the testimony did
3 already account for that information, and they're
4 really only talking about, I guess, sort of any
5 developments that would come out of the discussions
6 for the stipulation.

7 Is that correct?

8 MS. SATTER: That's one of the things we talked
9 about. That or anything out of the receivership
10 hearing. That is on there.

11 JUDGE BRODSKY: Well, I mean, if that becomes
12 an issue, then make a separate file.

13 MS. SATTER: I would imagine whatever -- I'm
14 not asking for permission to file anything special on
15 March 30th. If I were to file something, I would
16 file a motion for leave to file.

17 So that way whoever has a comment
18 could make it.

19 MS. FELTON: That's fine.

20 JUDGE BRODSKY: Okay. So that addresses the
21 concern?

22 MS. FELTON: Yes, it does.

1 JUDGE BRODSKY: Okay. All right. Anything?

2 MS. SCARSELLA: One more thing, your Honor.

3 JUDGE BRODSKY: Okay.

4 MS. SCARSELLA: Considering the short amount of
5 time that Staff has between now and the hearing and
6 trying to assess this information, they may need to
7 send out some more data requests.

8 I was wondering if you could get a
9 commitment from the Company to the responses using
10 their best efforts within seven days.

11 I know that's a short period of time,
12 but we only have a little less than three weeks
13 before the hearing -- or actually two weeks before we
14 have to file any revised testimony.

15 JUDGE BRODSKY: What sort of discovery are you
16 contemplating?

17 MS. SCARSELLA: I'm sorry?

18 JUDGE BRODSKY: What sort of discovery are you
19 contemplating?

20 MS. SCARSELLA: I mean, Staff really needs to
21 go through -- they may introduce data requests, you
22 know, based on the information that they received

1 last week.

2 MS. VON QUALEN: Your Honor --

3 JUDGE BRODSKY: I would --

4 MS. VON QUALEN: I'm sorry.

5 Your Honor, Staff may need to confirm
6 whether or not this document that we're attaching to
7 the 18th motion are the same as what Staff has looked
8 at, things like that to make sure that we know
9 exactly what it is we're looking at.

10 And we would have to confirm some of
11 it, I think, with the Staff.

12 MR. ARMSTRONG: I think that could be the topic
13 of this effort to stipulate some facts.

14 JUDGE BRODSKY: Okay.

15 MR. ARMSTRONG: I'd tried to stipulate as much
16 as we can. And if there's something that relates to
17 the material we don't have under review, let's hear
18 about it and try to do it.

19 JUDGE BRODSKY: Right.

20 As to -- it sounds like if it's
21 checking things like authenticity of documents -- it
22 doesn't sound like, in any case, you're looking for

1 sort of new numbers, at this point.

2 If it's checking things as to
3 authenticity and inclusion of the previous analysis
4 or those sorts of questions, it does sound like an
5 appropriate rider for the requesting of facts or
6 whatever stipulation format that you're using.

7 Does that address the issue or does
8 that leave part of it open?

9 MS. SCARSELLA: Well, I mean we'll -- to the
10 extent that we have questions concerning the
11 authenticity, yes, that addresses it.

12 But it's hard to say, right now,
13 whether Staff would have any substantial questions
14 based on the information that they've received. I
15 mean, I would hate to be precluded from seeking
16 further information from the Company following any
17 review of the documents.

18 MS. FELTON: Isn't there some way that, you
19 know, that if they request the information, we can --
20 you know, we can talk with them about it?

21 I don't know why we need to have a
22 formalized data request on any of this information.

1 MS. SCARSELLA: Well, we would need to -- if we
2 were to file revised testimony, we would need a data
3 response to be able to cite to it the testimony and
4 get it onto the record, if necessary.

5 JUDGE BRODSKY: All right.

6 MS. SCARSELLA: I mean --

7 JUDGE BRODSKY: Okay. Let's do it this way:

8 Try and construct them in a matter
9 that fits with the stipulations and the request to
10 admit.

11 If there are situations that pertain
12 to sort of a new numbers situation, then I suppose
13 the construction would be to admit or deny; but if
14 it's denied by the Company, then to provide the
15 relevant information.

16 Okay. So, that doesn't preclude you
17 from getting the information. I'm just trying to see
18 if it can be done as officially as possible within
19 the framework of what's going on already anyway.

20 Is that okay?

21 MS. SCARSELLA: Yes.

22 JUDGE BRODSKY: All right. Good.

1 MS. FELTON: It's workable.

2 JUDGE BRODSKY: Good. Okay. Any other issues?

3 Okay. This matter is continued to
4 April 4th.

5 Actually, before I continue the matter
6 to April 4th, let me just comment at this point
7 that I'm assuming that given the nature of the time
8 frame, that the people want to make their filings on
9 the 30th and proceed straight to trial on the 4th.

10 Now, if there're going to be any
11 outstanding procedural issues that need resolution,
12 then what we need to do is at least have the motions
13 done on the 30th. Okay? So that they can be dealt
14 with right at the start of the trial and at least be
15 sort of on the agenda for resolutions. So, let's add
16 that as something else that needs to be done by March
17 30th.

18 I didn't -- in any case, I didn't hear
19 anybody clammering for any additional pretrial
20 status. So I'm assuming that everybody will be ready
21 for trial on the 4th.

22 All right. So, with that, we will --

1 Was there something you wanted to say
2 to that?

3 MS. SATTER: I just had one question.

4 After we do the pretrial memos, can we
5 rely on our statement of the scope of the trial and
6 the scope of the issues that we set out in pretrial
7 motion? We don't have to restate that upon the
8 motion --

9 JUDGE BRODSKY: Rely on for what purpose?

10 MS. SATTER: Well, for purposes of scope?

11 JUDGE BRODSKY: Of what?

12 MS. SATTER: Of what relief might be granted in
13 this case.

14 MR. ARMSTRONG: All right. Is the pretrial
15 memo you speak about that series of, basically, kind
16 of charts that show what different parties' positions
17 were with respect to the rate case or rate returns?
18 I mean, that's all I was thinking.

19 MS. SATTER: Well, we served the pretrial memo.
20 It was a memo. There were attachments. But I'm
21 assuming that you read it. I'm entitled to assume.

22 MR. ARMSTRONG: We'll work it out. We'll work

1 it out.

2 I do not believe that you're asking
3 the Utility today to stipulate to your pretrial memo;
4 but there may be things in your pretrial memos that
5 may be the subject of stipulations.

6 MS. SATTER: Okay.

7 JUDGE BRODSKY: Well, that's true.

8 At the same time, I think what
9 Mrs. Satter's question was -- correct me if I'm
10 wrong.

11 But you were saying when you set forth
12 the issues and sort of the proposed adjustment or
13 proposed relief, that would be related to that issue
14 if you prevail on that issue.

15 I think, that's what your question was
16 about, right?

17 MS. SATTER: Yeah.

18 JUDGE BRODSKY: And it seems to me that when
19 those issues are set forth, that that's fine. I'm
20 not looking for them to be reissued unless there's a
21 change that you need to make me aware of.

22 MS. SATTER: Or if somebody objects, then they

1 should state their objection by the 30th.

2 JUDGE BRODSKY: Well, the thing with the
3 pretrial memoranda is that it's each party's
4 opportunity to say, Hey, this is what I think the
5 case is about. This is the relief I think this
6 issue's about.

7 So, I mean, I don't know that there's
8 a whole lot of objection. I certainly don't want a
9 lot of argument about the pretrial memoranda for
10 themselves.

11 I mean, you know, obviously, I expect
12 that issues that are being contested everybody's
13 going to have a different opinion as to what -- which
14 way the issues should go and so forth.

15 MS. SATTER: And that'll speak for itself.

16 JUDGE BRODSKY: Yeah, let's just save that for
17 the case.

18 MS. SATTER: Right. And that's what I would
19 expect.

20 JUDGE BRODSKY: Right.

21 But, you know, no, you don't have to
22 do a whole nother pretrial memoranda -- or memorandum

1 unless, as I said, it's going to be used for
2 self-purposes.

3 MS. SATTER: Okay. Thank you.

4 JUDGE BRODSKY: All right.

5 So, one last call?

6 Okay. With that, we'll continue until
7 April 4th at 9:30. Thank you.

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9 (Whereupon, this matter
10 was continued to April
11 4th, 2005 at 9:30 a.m.)

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